



City of Albuquerque

Legislative File Number O-05-140 (version 1)

CITY of ALBUQUERQUE SIXTEENTH COUNCIL

To Protect Home And Business Property Ownership And Establish A Process For Review
Of Certain Eminent Domain Actions Initiated By The City Of Albuquerque.

CITY of ALBUQUERQUE SIXTEENTH COUNCIL

BE IT ORDAINED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF
ALBUQUERQUE:

Section 1. Title. This ordinance shall be entitled the Home and Business
Property Protection Ordinance.

Section 2. Findings.

The Council finds that:

(1) On June 23, 2005, in the decision *Kelo, et al. vs. City of New London, Connecticut, et al.*, 545 U.S. ____ (2005), the United States Supreme Court upheld the government taking of private homes and business properties for uses that would promote job growth and increase tax revenues.

(2) Economic development and revitalization and rehabilitation of urban areas are a matter of course for local government. However, a municipality's actions to obtain these development and revitalization efforts should not result in the taking of occupied homes and operating businesses.

(3) The *Kelo* case expanded the purpose of eminent domain beyond the purposes contemplated by New Mexico law and City Ordinances, including the State Metropolitan Redevelopment Code, the State Eminent Domain Code, and the City's Metropolitan Redevelopment Ordinance.

(4) The Council cannot support the use of municipal eminent domain powers to take an occupied residence or operating business that is not blighted or a public nuisance for a purpose that is justified only by “economic development.”

Section 3. Any eminent domain action initiated by the City that would result in the taking of an occupied residence or an operating business under the Fifth Amendment of the United States Constitution and state and City law must be approved by the City Council prior to its initiation.

Section 4. The Council shall not approve a taking of an occupied residence or operating business unless it first finds that the residence or business is blighted or a public nuisance as set forth in Sections 11-1-1-1 et seq. ROA 1994, and that the purpose of the eminent domain action is for a public purpose as set forth in the State Metropolitan Redevelopment Code or the State Eminent Domain Code.

Section 5. SEVERABILITY CLAUSE. If any section, paragraph, sentence, clause, word or phrase of this ordinance is for any reason held to be invalid or unenforceable by any court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions of this ordinance. The Council hereby declares that it would have passed this ordinance and each section, paragraph, sentence, clause, word or phrase thereof irrespective of any provision being declared unconstitutional or otherwise invalid.

Section 6. COMPILATION. This ordinance shall be incorporated in and made part of the Revised Ordinances of Albuquerque, New Mexico, 1994.

Section 7. EFFECTIVE DATE. This ordinance shall take effect five days after publication by title and general summary.

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